IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2407 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHARMAJI MALAJI THAKOR

Versus

STATE OF GUJARAT THRO' ADDL. SECRETARY(APPEAL)

Appearance:

1. Special Civil Application No. 2407 of 2004

MR VIPUL S MODI for Petitioner No. 1

MR HD DAVE, ASST.GOVERNMENT PLEADER for Respondent No. 1-3

MR MEHUL H RATHOD for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE A.R.DAVE

Date of decision: 07/04/2004

ORAL JUDGEMENT

Rule. Service of rule is waived by learned AGP

Shri H.D. Dave for respondents Nos. 1 to 3 and by learned advocate Shri Mehul Rathod for respondent No. 4. At the request of the learned advocates, the petition is finally heard today.

2. The facts giving rise to the present petition, in a nutshell, are as under :

2.1 The petitioner was aggrieved by an order dated 19.6.2003 passed by the Collector, Palanpur and, therefore, he filed a revision application before respondent No. 1. Alongwith the said revision application, an application praying for stay of implementation of the order passed by the Collector was also filed. The stay application was to be heard on 5.11.2003. On 5.11.2003, as nobody appeared for the petitioner, the said application was rejected.

3. Learned advocate Shri Modi appearing for the petitioner has submitted that in fact intimation with regard to the date of hearing had neither been served upon the petitioner nor upon the learned advocate appearing for the petitioner. It has been therefore submitted by him that in the interest of justice, one more opportunity should be given to the petitioner.

4. Learned AGP Shri H.D. Dave appearing for respondents Nos. 1 to 3 has submitted that a notice dated 13.10.2003 had been sent to the petitioner as well as to his advocate, whereby intimation was given to the petitioner that the said application was to be heard on 5.11.2003.

5. It has been submitted by him that the said notice must have been served upon the petitioner and his advocate and, therefore, it was the duty of the petitioner either to appear personally or through his lawyer before respondent No. 1 so that the application for stay can be decided, but as neither the petitioner nor his advocate appeared before respondent No. 1 on 5.11.2003, the application for stay was rejected by respondent No. 1. According to him, there is no violation of principles of natural justice for the reason that sufficient opportunity was given to the petitioner, but the petitioner did not avail of the said opportunity and did not appear before the authority and, therefore, the impugned order was passed.

6. Learned advocate Shri Mehul Rathod appearing for respondent No. 4 has also reiterated the submissions made by the learned AGP.

7. I have heard the learned advocates and have noted the fact that possibly, the letter giving intimation to the petitioner might not have been received by the petitioner. The learned AGP could not show anything to the effect that the said notice had been served upon the petitioner or his lawyer. Looking to the affidavit filed by the petitioner to the effect that the said notice had not been served upon him, a benefit of doubt is given to the petitioner believing that possibly, the said letter did not reach the petitioner or his lawyer.

8. In the circumstances, in the interest of justice, the impugned order dated 6.11.2003/5.12.2003 is quashed and set aside and respondent No. 1 is directed to issue a fresh notice to the petitioner as well as to respondent No. 4 so that both can be heard and the question with regard to grant of interim relief can be decided by him. It is hoped that a fresh notice shall be given within one month from today and the question with regard to grant of interim relief would be decided within one month from the date of issue of the show-cause notice. The learned advocates appearing before this court have assured this court that their counterparts appearing before respondent No. 1 shall not pray for time and they will argue the application on the date, which might be fixed by respondent No. 1.

In view of the above order, the petition stands disposed of as allowed. Ad-interim relief granted by this Court shall operate upto 30th June, 2004. Rule is made absolute to the above extent with no order as to costs.

(A.R. Dave, J.)

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